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Paper 75  
31 March 2009

UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Interference No. 105,613 (RT)

AMGEN, INC.  
(09/895,943),  
Junior party,

v.

HUMAN GENOME SCIENCES, INC.  
and Schering Corp.  
(6,844,170),  
Senior party.

Before: RICHARD TORCZON, SALLY GARDNER LANE, and  
MICHAEL P. TIERNEY, *Administrative Patent Judges*.

TORCZON, *Administrative Patent Judge*.

JUDGMENT  
Bd.R. 127  
On merits

I. INTRODUCTION

In an accompanying decision (Paper 74), the Board holds that the senior party (HGS) did not satisfy the utility requirement in its disclosure. Since utility is also a requirement for reduction to practice, *University of*

*Rochester v. G.D. Searle & Co.*, 358 F.3d 916, 926 (Fed. Cir. 2004), HGS no longer has a constructive reduction to practice. Consequently, it is appropriate to enter judgment.

## II. JUDGMENT

ORDERED that judgment be entered against HGS for count 1, the sole count (Paper 1);

FURTHER ORDERED that claims 1-34 of the HGS involved patent (Paper 4) be CANCELED, 35 U.S.C. 135(a); and

FURTHER ORDERED that a copy of this judgment be entered in the administrative records of the involved patent and application.

cc:

Anthony M. Zupcic and Robert H. Fischer, Fitzpatrick, Cella, Harper & Scinto, of New York City, New York, for Amgen, Inc.

Richard L. DeLucia and John Kenny, Kenyon & Kenyon LLP, New York City, New York, for Human Genome Sciences, Inc. and Schering Corp.